IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12145 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

B.M. KURESHI

Appearance:

1. Special Civil Application No. 12145 of 2002

MR NAGESH C SOOD for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/04/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Nagesh Sood for the petitioner Corporation. In this petition, this court has

issued rule and notice as to interim relief returnable on 28.1.2003, by order dated 16.12.2002. The respondent has not remained present today either in person or through any advocate though notice has been duly served upon the respondent. Therefore, since Mr. Sood was having no objection, the matter was taken up for final hearing today in absence of the respondent.

In this petition, the petitioner corporation has challenged the award made by the industrial tribunal Nadiad in Reference No. 778 of 1998 dated 17th October, 2001. The Industrial Tribunal has set aside the order of punishment dated 30th December, 1995 wherein two increments were stopped with cumulative effect and the directions were issued to pay arrears thereof to the respondent workman.

It was submitted by the learned advocate Mr. Sood that after departmental inquiry, the petitioner corporation has taken sufficient care while imposing the punishment and the punishment imposed upon the respondent workman in the departmental proceedings was just and reasonable punishment and, therefore, the tribunal ought not to have interfered with the punishment imposed by the petitioner corporation. He further submitted that the driver has given statement before the police which was produced before the tribunal at Exh.12 and in that statement before the police, the driver has narrated incident, the manner in which incident occurred. He has also placed reliance on page 19 which is the FIR from the Depot Manager. Thereafter, he also relied upon page 21 where the driver has given his statement in the departmental inquiry. In short, it was his submission that once there was scope of sufficient space to drive the vehicle, then, in such circumstances, it was his duty to take sufficient care and to remain alert for avoiding untoward incident. He also submitted that if the sufficient care and caution would have been taken by the driver, then, the accident in question would not have taken place and, therefore, the corporation was justified in imposing the punishment. He also submitted that the boy has died because of the negligence on the part of the driver and due to that, the corporation is required to suffer both way by paying arrears of Rs.41000.00 and to pay the compensation to the heirs of the deceased and, therefore, tribunal ought not to have interfered with the punishment imposed by the corporation.

I have considered the submissions made by the learned advocate Mr. Sood for the petitioner. It is clear that the person who has submitted FIR namely Depot

Manager was not an eye witness of the accident and his statement is based upon mere presumption. As regards the statement of driver given before the police, he has admitted guilt but he explained the manner in which the accident occurred. In the said statement, it was clarified by him that there was sufficient space to drive the bus but all of a sudden, the boy crossed the road and therefore, the accident occurred at the middle portion of the bus and not in the front side of the bus, and the same story and explanation has been given by the driver before the departmental authority. This aspect has been taken into account by the tribunal to the effect that when the departmental inquiry has been initiated against the driver, then, it is the burden upon the employer to prove the charge against the driver workman to prove the charge. The tribunal has come to the conclusion that even the conductor was not examined before the departmental authority who was in the said bus and who was the eye witness of the accident and he was an employee of the corporation. No such efforts were made by the corporation to examine the conductor and the depot manager who was examined before the departmental authority in inquiry was not an eye witness and the tribunal was of the view that considering his presumption, punishment cannot be imposed upon the driver and, therefore, the tribunal has set aside the order of punishment. According to my opinion, considering the report submitted by the depot manager and evidence in the departmental inquiry wherein boy as well as driver both were equally responsible. The tribunal has taken the view that when there is no legal evidence of any negligence of the driver in the departmental inquiry, charge levelled against the driver cannot be considered to have been established against the driver and, therefore, the tribunal has set aside the order of punishment by coming to the conclusion that the boy dashed with the middle portion of the bus when the front side was already crossed, there was some negligence on the part of the driver, then, boy must have dashed with the front side of the bus. Thus, the tribunal has observed that the boy had dashed with the middle portion of the bus near the diesel tank of the bus and, therefore, the tribunal has set aside the order of punishment. I am of the opinion that the tribunal has rightly given reasons in support of its conclusion and has not committed any error and, therefore, the order of the tribunal does not require any interference of this court in exercise of the powers under Article 226/227 of the Constitution of India.

In the result, there is no substance in this

petition and, therefore, same is dismissed. Rule is discharged. There is no order as to costs.

Dt. 9.4.2003. (H.K. Rathod,J.)
Vyas